

2013 Military Leave Legislation

What Employers Need to Know



HEART Act, USERRA and IRC §414(u)



- The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) protects the job rights of individuals who voluntarily or involuntarily leave employment positions to undertake military service.
- The Heroes Earnings Assistance and Relief Tax (HEART) Act is federal legislation signed by President George W. Bush on June 17, 2008.
- IRC is the Internal Revenue Code.

Who is Affected???

- The legislation primarily changes the eligibility and service credit purchase calculations for active Pennsylvania Public School Employees' Retirement System (PSERS) members who are **activated for military service on or after July 1, 2013** and the employer's requirement to contribute to PSERS during the leave period.
- Not affected are those who are already on such a leave of absence from their PA public school employment prior to July 1, 2013.
 - **Do not change existing contract records for any member on Activated Military Leave that started before July 1, 2013**

Entering Contract Records Beginning of a Leave

- Based on military documentation employer creates a new contract record for the employee using the Work Status **ACTMLN**
- The Contract Record **start date** is the determination if the ACTMLN for *USERRA leave.

*Members who are activated for military service on or after July 1, 2013

Monthly Reporting of Members on USERRA Leave

- Members on USERRA leave are not permitted to make contributions until they return from leave
- Employers are not permitted to make contributions
- The Retirement Code is amended to exclude differential wage payments. Those payments will not be subject to contributions
- Report Contracted wages that the member would have earned will be reported under Wages No Contributions (WNC)

Monthly Reporting of Members on USERAA Leave (2)

- Include the employee's service that would have been earned on each monthly work report
- Approve work report by the 20th of the following month (late reporting delay in correction of employer SOA)
- PSERS will credit the Employer Contributions that would have been charged to the employer under the old rules
- The Statement of Account will accurately reflect the Employer Contributions for each month

Differential Payments to Members on USERRA Leave

- Differential wage payments should not be reported to PSERS. Differential wage payments are payments some employers may make to employees on military leave (similar to jury duty, for example).
- Short-term military leaves should not be reported.

Returning to Service

- How long after military leave ends does the member have to return to public school service for USERRA requirements?
- Same rules apply as for activated military.
 - Length of Leave <31 days, Return within 1 day*
 - Length of Leave >30 days and <180 days, Return within 14 days*
 - Length of Leave >180 days, Return within 90 days.
- Late reporting does not impact member's timeframe.

**There is some leeway.*

Eligibility and Service Credit

- Upon timely returning to service, members on USERRA automatically receive eligibility points...regardless if the member does or does not purchase the associated service credit.
- To receive the associated service credits the member must make application to purchase the USERRA leave within the timeframe that is equal to 3x the USERRA leave or 5 years from the date of return, whichever is later.

Eligibility and Service Credit

- Eligibility points are for premium assistance and vesting, and regular (normal or early) retirement.
 - Once purchased, the eligibility points are used in the calculation of benefit service credits while remaining as eligibility points.
 - If not purchased, the member only gets the eligibility points.
 - Member only receives benefit service credits if purchased, or if member returns to school employment and then dies or retires prior to expiration of the purchase period.
 - Eligibility points will not be used when determining service eligibility for disability.

Purchasing USERRA Service Credit

- Time frame to apply and to repay is the exact same window.
- Federal law limits the payment period to the lesser of three times the length of the leave or five years after reemployment and requires actual payment unless the member dies or terminates (break in service) within that time.
- Re-employment is the first date that the member returns to public school service regardless of qualification.
 - Upon receipt of Contract Record that End Dates the Work Status = ACTMLN that has a Start Date \geq 7/1/2013

Purchasing USERRA Service Credit

- Once the member returns from USERRA leave, member contributions to acquire the service credit will be the contributions that the members would have made (based on the compensation that they would have earned) had they not gone on military leave.
- Interest
 - USERRA prohibits charging the member interest on any contributions the member pays for USERRA leave. Therefore, interest will not be charged on contributions not made during the leave. Once the contributions are paid, statutory interest will be credited prospectively.
- Member must pay in full; no actuarial debt
 - Exception - If member dies or terminates (break in service) prior to payoff date of USERRA purchase, incomplete payment will be applied to the benefit.
 - Will be granted school service and treated as an actuarial debt